

APPEAL NO. 041139
FILED JUNE 28, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 29, 2004. The hearing officer determined that the appellant's (claimant) impairment rating (IR) is 0%.

The claimant appeals, contending that the designated doctor properly applied Texas Workers' Compensation Commission (Commission) Advisory 2003-10, signed July 22, 2003, and that the designated doctor's amended report assessing a 25% IR should have been given presumptive weight and adopted. The respondent (carrier) responds, urging affirmance.

DECISION

A timely appeal not having been filed, the decision and order of the hearing officer have become final pursuant to Section 410.169.

Pursuant to Section 410.202(a), a written request for appeal must be filed within 15 days of the date of receipt of the hearing officer's decision. Section 410.202 was amended effective June 17, 2001, to exclude Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code from the computation of time in which to file an appeal. Section 410.202(d). Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)) provides that an appeal is presumed to have been timely filed if it is mailed not later than the 15th day after the date of receipt of the hearing officer's decision and received by the Commission not later than the 20th day after the date of receipt of the hearing officer's decision.

Commission records indicate that the hearing officer's decision was mailed to the claimant on April 20, 2004. Pursuant to Rule 102.5(d), unless the great weight of the evidence indicates otherwise, the claimant is deemed to have received the hearing officer's decision five days after it was mailed; in this case the deemed receipt date is April 25, 2004, and the last date for a timely appeal to have been filed or mailed was May 14, 2004. The claimant in the request for review states, and files an affidavit to the effect, that she did not receive a copy of the hearing officer's decision and order until Monday, April 26, 2004, and that 15 days thereafter, as calculated under the amended Section 410.202, would be May 17, 2004. The claimant's request for review was dated, sent by facsimile transmission, and received, May 17, 2004. However, the Appeals Panel has held that when Commission records show mailing to the claimant on a particular day at the correct address, the assertion that the decision was received after the deemed date of receipt is not sufficient to extend the date of receipt past the deemed date of receipt provided by Commission rule. See Texas Workers' Compensation Commission Appeal No. 022550, decided November 14, 2002 and Texas Workers' Compensation Commission Appeal No. 012333, decided November 5,

2001. We are not persuaded that the claimant's affidavit that she did not receive the hearing officer's decision and order until April 26, 2004, constitutes the great weight of the evidence necessary to overcome the deemed date of receipt. Thus, the appeal needed to be mailed or filed with the Commission no later than May 14, 2004, the 15th day after the deemed date of receipt. The claimant's appeal was filed on May 17, 2004, and thus the appeal is untimely.

The appeal being untimely, the jurisdiction of the Appeals Panel was not properly invoked and the decision is final pursuant to Section 410.169.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **NORTH AMERICAN SPECIALTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Robert W. Potts
Appeals Judge